

## ITEM 1

### PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 56026, subdivision (c)(4), 56171, subdivision (a), 56190, 56191, 56192, 56194, 56321, 56325, subdivision (b), 56346, 56362, subdivisions (c), (d), (e), and (f), and 56363.3

Statutes of 1980, Chapters 797, 1329, and 1353; Statutes of 1981, Chapters 972, 1044, and 1094; Statutes of 1982, Chapter 1201; Statutes of 1987, Chapters 311 and 1452; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapter 1361; Statutes of 1993, Chapter 1296; Statutes of 1994, Chapter 1288; and Statutes of 1995, Chapter 530

Title 5, California Code of Regulations, Sections 3043, subdivision (d), and 3067

#### *Special Education*

*Community Advisory Committees; Governance Structure; Enrollment Caseloads; Extended School Year; Resource Specialist Program (excluding maximum caseloads); Maximum Age Limit – Age 22; Interim Placements; and Written Consent.*

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### Executive Summary

#### Background

At the September 15, 1999 hearing on proposed *Special Education* Parameters and Guidelines, the Commission instructed staff and the parties to provide additional information to the Commission related to the legislative intent behind the enactment of Statutes of 1980, Chapter 797 (Master Plan). Specifically, Member Angelides requested staff and the parties compile the following information for the Commission's review:

- Legislative history of the evolution of federal and state legislation, including the additional statutes added, matched against the funding evolution of the special education program.
- Legislative intent behind the enactment of Statutes of 1980, Chapter 797.
- A more detailed explanation of the Department of Finance's proportional offset approach.

At the October 28, 1999 hearing, the Commission voted to postpone adoption of the *Special Education* Parameters and Guidelines until the December 1, 1999 hearing. It was the Commission's intent that during this postponement the parties would enter into negotiations regarding the settlement of the Special Education Test Claim. Several Commission members stated that a negotiated settlement would be beneficial to all parties concerned and could avoid protracted legal battles over reimbursement amounts.

At the December 1, 1999 hearing, the Commission continued its hearing of the proposed *Special Education* Parameters and Guidelines to allow the parties to negotiate a settlement. Specifically, all parties agreed to place the Special Education Parameters and Guidelines on inactive status for

renewable six-month periods. Additionally, the parties agreed to provide quarterly updates to the Commission regarding the negotiations progress. Specifically, Member Angelides made the following motion:

“Based on receipt of waivers, that we postpone this matter and consider renewal of the waivers in six months’ time; that either party may come – may, upon reasonable notice . . . 30 days – request a meeting of the Commission. . . . And that there will be a report in 90 days from the Executive Director of the Commission on the status of discussions.”

The motion passed by a 6-1 vote, with the State Controller’s representative voting no.

On December 3, 1999, the Commission received the claimants’ “Agreement to Waive and to Continue Hearing on Parameters and Guidelines” executed by the claimants and the Department of Finance. The Agreement provided for continuance of the Special Education Parameters and Guidelines until the June 29, 2000 hearing.<sup>1</sup>

On March 15, 2000, the claimants submitted a request with the Commission to “reserve a place on the Commission’s March 30, 2000 hearing agenda” to orally present the first “quarterly” update.<sup>2</sup> At the March 30, 2000 hearing, the claimants stated:

“Unfortunately, . . . we do conclude that there are such philosophical differences between the parties that we hereby call on the Commission to put back on your agenda the consideration of parameters and guidelines at your next meeting. While we will look forward to continuing discussions with the administration, we do not believe that they are likely to be productive. We do not believe at this point we have sufficient response from the administration to give us any in-depth ability to be able to assure you that over the course of these six months that you had set aside that the negotiations are going to reach conclusion.”<sup>3</sup>

Based on this request, the Commission notified the claimants that they must provide a written request to place the Special Education Parameters and Guidelines on the next agenda. On the afternoon of March 30, 2000, the claimants filed their request for the Commission to “recalender the hearing on parameters and guidelines [for the Special Education Test Claim] for May 25, 2000.”<sup>4</sup> On April 3, 2000, the Commission sent a letter to the parties confirming the claimants’ request to place the *Special Education Parameters and Guidelines* on the May 25, 2000 calendar.

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<sup>1</sup> See Agreement to Waive and to Continue Hearing on Parameters and Guidelines attached as Exhibit B.

<sup>2</sup> See claimants’ March 15, 2000 letter attached as Exhibit C.

<sup>3</sup> See March 30, 2000 transcript at page 10 as Exhibit D.

<sup>4</sup> See claimants’ March 30, 2000 letter attached as Exhibit E.

## Legal Issues

Staff notes that the following legal issues are before the Commission concerning the Special Education Parameters and Guidelines: (1) Offsets and (2) Uniform Cost Rates. Staff, in its analysis prepared for the September 15, 1999 hearing, proposed the following options for the first legal issue, Offsets:

**OPTION 1A:** The Commission finds that only four program areas received revenue specifically intended to fund the costs of those program areas. However, the Commission finds that these programs were not specifically funded in an amount sufficient to fund the entire cost of the state mandate. Accordingly, the Parameters and Guidelines must include language to explain that additional revenue specifically intended to fund the cost of the state mandates shall be deducted from the costs claimed.

If the Commission adopts **OPTION 1A**, the Commission will continue to hear and decide the Uniform Cost Rate issue below.

**OPTION 1B:** The Commission finds that the state has provided additional revenue specifically intended to fund the eight program areas in an amount sufficient to fund the cost of these programs. Therefore, the claimants are not entitled to reimbursement.

If the Commission adopts Department of Finance's (DOF's) **OPTION 1B**, the hearing is over and the Commission need not hear the Uniform Cost Rate issue since it will have found that the eight program areas are fully funded.<sup>5</sup>

**OPTION 1C:** The Commission finds that the Special Education program, including the eight state-mandated components found by the Commission, was generally funded from a mixture of state, federal, and local funds. The Commission therefore finds that the State is entitled to offsets for those eight components in an amount proportionate to the State's contribution to funding of the overall Special Education program, and that the State is further entitled to offset any additional state funding that was directed to individual component activities. Accordingly, the Commission shall conduct further proceedings to determine the State's proportionate contribution to overall funding of the program, and the Parameters and Guidelines must include language to explain that such offsetting revenues shall be deducted from the costs claimed.

If the Commission adopts DOF's **OPTION 1C**, the Commission will continue to hear and decide the Uniform Cost Rate issue below. However, the Commission will need to schedule additional hearings to determine the proportionate contribution to overall funding of the Special Education Program.

Staff recommends that the Commission adopt **OPTION 1A**.

In addition, staff proposed the following options for the second legal issue, Uniform Cost Rates:

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<sup>5</sup> Staff notes that the Department of Finance provides on page 9 of its Response: "the eight programs and services found by the Commission to be state mandates in the proceeding 'have never been and will never be 'unfunded mandates' within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514,' and that, pursuant to Government Code section 17556(e) and consistent with common sense, the Claimants' requests for further state subvention must be categorically denied and these proceedings terminated." (Volume II, Bates Page 273.)

**OPTION 2A:** The Commission finds that the use of Uniform Cost Rates in the Special Education Parameters and Guidelines is consistent with the Commission's statutes and regulations.

If the Commission adopts **OPTION 2A**, the Commission must determine if the Uniform Time/Cost Allowances in staff's or the claimants' Proposed Parameters and Guidelines are reasonable and should be adopted as proposed or modified, in whole or in part.<sup>6</sup> After making these determinations, staff would prepare a revised version of the Proposed Parameters and Guidelines to present for adoption by the Commission if necessary.

**OPTION 2B:** The Commission finds that Uniform Cost Rates do not provide the level of detail necessary to ensure that the state is paying the proper amount for the eight program areas. Therefore, this claim requires the use of actual documentation and striking of all references to averages, uniform allowances, and time studies from the Special Education Parameters and Guidelines.

If the Commission adopts **OPTION 2B**, the Commission must decide which version to adopt as proposed or modified, in whole or in part. After making these determinations, staff would prepare a revised version of the Proposed Parameters and Guidelines to present for adoption by the Commission if necessary.

Staff recommends that the Commission adopt **OPTION 2A**.

Staff is not re-issuing the Special Education Parameters and Guidelines with this document. Please refer to the October 28, 1999 hearing materials, Exhibit A, for Staff's Analysis and the four versions of the Special Education Parameters and Guidelines.<sup>7</sup>

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<sup>6</sup> The uniform cost rates in staff's Proposed Parameters and Guidelines are almost identical to those proposed by the claimants. Staff analyzes each section of staff's Proposed Parameters and Guidelines in *Part III – Review of Proposed Parameters and Guidelines*.

<sup>7</sup> NOTE TO COMMISSION MEMBERS: Please contact David E. Scribner at (916) 323-8221 regarding any documentation questions or issues.